

ARTICLE 24 - NUISANCE ABATEMENT

(As Amended September 20, 1999 via BOS Resolution No. 96-99)

Section 2401 - Purpose & Authorization.

Pursuant to **A.R.S. 11-268**, requiring an owner, lessee, occupant, lien holder or other person having an interest in real property in Navajo County to remove rubbish, trash, weeds, filth, debris or dilapidated buildings constituting a public nuisance; prescribing the procedure for notice and appeal; providing for the removal, abatement or injunction thereof by the County and the assessment of the costs thereof as a lien against the property in the event of non-compliance; and prescribing a penalty for the placement of such materials on the property of another.

Section 2402 - Definitions.

As used herein, capitalized terms shall have the following meanings:

1. **"Board"** means the Navajo County Board of Supervisors.
2. **"Building"** means any structure on Real Property, movable or immovable, permanent or temporary, vacant or occupied, used (or of a type customarily used) for human lodging or business purposes, or where livestock, produce, or personal or business property is located, stored or used.
3. **"Contiguous Sidewalks, Streets and Alleys"** means any sidewalk, street or alley, public or private, adjacent to the edge or boundary, or touching on the edge or boundary, of any Real Property.
4. **"County"** means the unincorporated areas of Navajo County.
5. **"Dilapidated Building"** means any Building in such disrepair, or damaged to such an extent, that its strength or stability is substantially less than a new Building, or that is likely to burn or collapse, and the condition of which endangers the life, health, safety or property of the public.
6. **"Grounds"** means any private or public land, vacant or improved.
7. **"Lessee"** means a person who has the right to possess Real Property pursuant to a lease, rental agreement or similar instrument.
8. **"Lienholder"** means a person having a lien against Real Property as shown in the public records maintained in the office of the Navajo County Recorder.
9. **"Lots"** means any plot or quantity of land, vacant or improved, private or public, as surveyed, platted or apportioned for sale or any other purpose.
10. **"Occupant"** means a person who has the actual use, possession or control of Real Property. This term does not include any corporation or association operating or maintaining rights-of-way for and on behalf of the United States government, either under contract or federal law.

11. **"Owner"** means a person who is a record owner of Real Property as shown by the public records in the office of the Navajo County Recorder, and includes a person holding equitable title under a recorded installment sales contract, contract for deed or similar instrument.
12. **"Person"** means an individual, partnership, corporation, association, trust, state, municipality, political subdivision, or any other entity that is legally capable of owning, leasing or otherwise possessing Real Property.
13. **"Public Nuisance"** means a Dilapidated Building or an accumulation of rubbish, trash, weeds, filth or debris that constitutes a hazard to the public health and safety as determined by the Navajo County Planning & Building Department, Health Department, or other department with jurisdiction over the condition.
14. **"Real Property"** means Buildings, Grounds, or Lots, as well as Contiguous Sidewalks, Streets and Alleys, located in the County.

Section 2403 - Removal of Public Nuisance by Owner, Lessee or Occupant, Lien Holder or Other Person having an interest in Real Property; Removal by County; Assessment of Costs; Recordation and Priority of Lien.

1. **Duty to Remove:** The Owner, Lessee, Occupant, Lienholder or other person having an interest in Real Property shall remove or otherwise abate a Public Nuisance located thereon within thirty (30) calendar days after service of a Notice to Abate or Enjoin as provided herein.
2. **Notice to Abate or Enjoin:** The Notice to Abate or Enjoin shall be served by the County Attorney on behalf of the Board not less than thirty (30) calendar days before the date for compliance and shall include the estimated cost of removal if the Owner, Lessee or Occupant does not comply. The estimated cost of removal may be provided by a qualified contractor or may be a good faith estimate by the department initiating the Notice to Abate.
3. **Service of Notice to Abate or Enjoin:** The Notice to Abate or Enjoin shall either be personally served or mailed by certified mail to the Owner, Lessee or Occupant at his or her last known address, or the address to which the tax bill for the property was last mailed. If the Owner does not reside on the property, a duplicate notice shall also be sent to the Owner at his or her last known address. The Notice to Abate or Enjoin shall also be served or mailed by certified mail to any Lienholder having a Lien against the Real Property. Failure or refusal to claim a notice within the time allowed by the postal authorities shall be deemed to constitute receipt by the addressee.
4. **Appeal of Notice to Abate or Enjoin:** Any Person receiving a Notice to Abate or Enjoin or otherwise having an interest in the Real Property may appeal to the Board as follows:
 - a. **Notice of Appeal:** A written Notice of Appeal shall be filed with the Clerk of the Board within fifteen (15) days after the Notice to Abate or Enjoin was

personally served or actually received by mail (as evidenced by the certified mail receipt or postal notice of refusal).

- b. **Contents of Notice of Appeal:** The Notice of Appeal shall state in reasonable detail why the appellant should not be required to comply with the Notice to Abate or Enjoin.
 - c. **Hearing on Appeal:** Upon receipt of the Notice of Appeal, the Board shall place the matter on the agenda for its next regular meeting. The department which initiated the Notice to Abate or Enjoin shall appear and present evidence as to the existence of the Public Nuisance. The appellant may present evidence controverting the existence of the Public Nuisance. The hearing shall be informal and without regard to the rules of procedure or evidence governing court proceedings. The Board shall hear and decide the appeal, and its decision shall be final. The appeal shall be sustained unless the Board upholds the Notice to Abate or Enjoin by unanimous vote.
 - d. **Extension of Time for Compliance:** If the Board's decision is adverse to the appellant, the date for compliance set forth in the Notice to Abate or Enjoin shall be extended by the number of days elapsing between the filing of the Notice of Appeal and the rendering of the Board's decision.
5. **Removal by Board:** If the Owner, Lessee, Occupant, Lienholder or other person having an interest in the Real Property fails to remove or otherwise abate the Public Nuisance within thirty (30) calendar days (or such extension thereof as may follow an appeal or be granted in writing by the County Attorney or the Board), the Board may, at the expense of the Owner, Lessee, Occupant, Lienholder or other person having an interest in the Real Property by unanimous vote, remove or abate the Public Nuisance or cause it to be removed, abated or enjoined; provided, however, that if such removal, abatement, or injunction is not undertaken within one hundred and eighty (180) days after the right to do so first accrues, a new Notice to Abate or Enjoin shall be served as provided in Paragraph 3.
- a. **Cost of Removal:** The cost of removal, abatement, or injunction shall not exceed the estimate set forth in the Notice to Abate or Enjoin, together with associated legal expenses incurred by Navajo County. Before undertaking the actual removal or abatement, or injunction, the department which initiated the Notice to Abate or Enjoin shall attempt to obtain at least three written estimates from qualified contractors (if available locally) and shall accept the lowest such estimate. Alternatively, the removal, abatement or injunction may be performed by Navajo County personnel, and the cost shall be deemed to be the same as the lowest estimate obtained from a qualified contractor.
 - b. **Dilapidated Buildings:** Before the removal of a Dilapidated Building, the Board shall consult with the state historic preservation officer to determine if the Building may be of historical value. Upon the removal of a Dilapidated Building, the County Assessor shall adjust the valuation of the Real Property on the property assessment tax roll from the date of removal.

- c. **Assessment:** Upon the removal, abatement, or injunction of the Public Nuisance, the actual cost of removal or abatement, together with the actual costs of any additional inspections and other incidental costs, as well as associated legal expenses, shall be an Assessment against the Real Property on which the Public Nuisance was located. The form of the Assessment (setting forth the facts supporting it, as well as the date and amount and a legal description of the Real Property) shall be approved by the Board and signed by the Chairman.
- d. **Notice of Assessment:** A Notice of Assessment shall be served in the same manner as the Notice to Abate or Enjoin. The Notice of Assessment may be appealed in the same manner as the Notice to Abate or Enjoin, but the issue on appeal shall be limited to the amount of the Assessment. An appeal shall extend the time for payment as set forth in Paragraph 4.d.
- e. **Recordation of Assessment:** If the Owner, Lessee, Occupant, Lien holder or other person having an interest in the Real Property fails to pay the Assessment within thirty (30) calendar days after receipt of the Notice to Abate or Enjoin (or any extension as may follow an appeal or be granted in writing by the County Attorney or the Board), the Assessment shall be delinquent and may be recorded in the office of the Navajo County Recorder. The Assessment shall be a lien against the Real Property from and after the date of recordation and shall accrue interest at the statutory judgment rate until paid. The Lien of the Assessment shall be prior and superior to all other liens, obligations or encumbrances against the Real Property, except liens for general taxes and prior recorded mortgages.
- f. **Foreclosure:** The Board may, but shall not be obligated to, by unanimous vote, bring an action to enforce the Assessment lien in the Navajo County Superior Court at any time after the Assessment becomes delinquent in accordance with paragraph "g" below. A sale of the Real Property to satisfy the assessment shall be made on judgment of foreclosure and order of sale. The recorded Assessment is prima facie evidence of the truth of all matters recited therein and of the regularity of all proceedings before the recordation thereof.
- g. **Assessment:** The assessment shall run against the Real Property until it is paid and shall be due and payable in equal annual Installments as follows. If any installment is not paid when due and payable, the assessment shall be deemed delinquent and subject to foreclosure.
 - (1) An assessment of less than \$500 shall be paid within one year after the assessment is recorded.
 - (2) An assessment of \$500.00 to \$999.99 shall be paid within two years after the assessment is recorded.
 - (3) An assessment of \$1,000 to \$4,999.99 shall be paid within three years after the assessment is recorded.

- (4) An assessment of \$5,000 to \$9,999.99 shall be paid within six years after the assessment is recorded.
- (5) An assessment of \$10,000 or more shall be paid within ten years after the assessment is recorded.
- h. **No Bar to Subsequent Assessments:** A prior Assessment under this Ordinance is no bar to a subsequent Assessment, and any number of liens on the same Real may be enforced in the same action.

Section 2404 - Placing Rubbish, Trash, Filth or Debris on Property of Another; Penalty; Assessment.

- 1. **Placing Rubbish, Trash, Filth or Debris on Property of Another is Prohibited:** Any Person who places rubbish, trash, filth or debris on any Real Property not owned by or under the control of said Person is guilty of a Class 1 Misdemeanor.
- 2. **Liability for Costs:** In addition to any fine which may be imposed pursuant to Paragraph 1, the Person shall be liable for all costs which may be assessed for the removal of the rubbish, trash, filth or debris pursuant to Section 2403.

Section 2405 - Non-Exclusive Remedy.

The remedies provided for in this Ordinance shall be in addition to any and all other remedies, civil or criminal, available to Navajo County pursuant to statute or common law, specifically including those set forth in A.R.S. § 13-2908, 36-602 and 49-143 and the *Uniform Code for the Abatement of Dangerous Buildings*.